

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 35

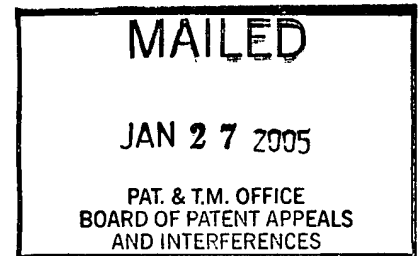
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DOUGLAS ROBERT CASE, DAVID DERK, JAMES MICHAEL DILE,
ROBERT CLAIR EDWARDS JR., AVISHAI HAIM HOCHBERG, DAVID T. KWAN,
THOMAS FRANKLIN RAMKE JR., PETE TANENHAUS, RANDY TUNG,
JOHN VIKSNE, BRETT WALKER and HUI-LAN WEN

Appeal No. 2004-2102
Application No. 09/191,256

ON BRIEF



Before THOMAS, LEVY, and MACDONALD, *Administrative Patent Judges*.

MACDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-22.

Invention

Appellants' invention relates to a system and method for remotely accessing a client from numerous machines and different platforms that requires no special software. This distributed client facility accomplishes a remote invocation of the client operations through a web browser such as Netscape Navigator or

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Microsoft Internet Explorer. The system and method of the present invention includes defining a set of application programming interfaces (APIs) or verbs that may be called remotely or from the same machine that the client portion of the client-server software is running on. The client user interface code then uses these new APIs to remotely invoke the client operations. These APIs provide the ability to have one to one communication or two way communication, for example sending a query and getting a reply. Further, there may be one to multiple relationship between a query request being sent and the number or replies. Similarly, there may be a multiple to one relationship between the number or queries and the number of replies. From a browser, an end user enters a URL containing a machine name and a port number separated by a colon. A listening program at the client listening on that port number established communication with the browser and invokes a client agent. The client agent includes conventional client functions as well as APIs that allow the client to interface with both the server and the browser. The client agent then serves an applet to the browser that makes the browser appear to the end user as the client machine. The applet can execute in the national language of either the client or the browser. The user can then execute client functions from the browser such as requesting the client to back itself up to

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the server. Appellants' specification at page 5, line 16,
through page 7, line 3.

Claim 1 is representative of the claimed invention and is
reproduced as follows:

1. A system for remotely accessing a client in a client-server
system comprising:

a browser for requesting remote access;

a client machine further comprised of a listening program
configured to be responsive to requests for remote access from
the browser, establish direct communications therewith, and
invoke a client agent for communicating with the browser and a
server machine.

References

The references relied on by the Examiner are as follows:

Kalajan	5,941,954	Aug. 24, 1999
Scherpbier	5,944,791	Aug. 31, 1999

Rejections At Issue

Claims 1-22 stand rejected under 35 U.S.C. § 103 as being
obvious over the combination of Scherpbier and Kalajan.

Throughout our opinion, we make references to the
Appellants' briefs,¹ and to the Examiner's Answer for the
respective details thereof.

¹Appellants filed an appeal brief on January 30, 2004 replacing
the brief filed November 11, 2003. Appellants filed a reply
brief on May 20, 2004. The Examiner mailed an Examiner's Answer
on March 16, 2004.

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OPINION

With full consideration being given to the subject matter on appeal, the Examiner's rejections and the arguments of the Appellants and the Examiner, for the reasons stated *infra*, we reverse the Examiner's rejection of claims 1-22 under 35 U.S.C. § 103.

I. *Whether the Rejection of Claims 1-22 Under 35 U.S.C. § 103 is proper?*

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the invention as set forth in claims 1-22. Accordingly, we reverse.

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of establishing a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). *See also In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). The Examiner can satisfy this burden by showing that some objective teaching in the prior art or knowledge generally available to one of ordinary skill in the art suggests the claimed subject matter. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Only if this initial burden is met does the burden of coming

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forward with evidence or argument shift to the Appellants.

Oetiker, 977 F.2d at 1445, 24 USPQ2d at 1444. *See also Piasecki*, 745 F.2d at 1472, 223 USPQ at 788.

An obviousness analysis commences with a review and consideration of all the pertinent evidence and arguments. "In reviewing the [E]xaminer's decision on appeal, the Board must necessarily weigh all of the evidence and argument." *Oetiker*, 977 F.2d at 1445, 24 USPQ2d at 1444. "[T]he Board must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion." *In re Lee*, 277 F.3d 1338, 1344, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002).

With respect to claims 1-22, Appellants have presented numerous arguments as to why the Examiner has not met the initial burden of establishing a *prima facie* case of obviousness. See the arguments listed at page 4 of the brief. We limit our discussion to Appellants' first argument, as it is dispositive of the appeal before us. At pages 5-14 of the brief, Appellants argue that "the Scherpbier reference and the Kalajan reference do not contain all the limitations of the present invention." We agree.

Appellants argue at page 6 of the brief, that Scherpbier "does not include a listening program [responsive to requests for remote access from the browser]." We agree. We find that the Examiner has repeatedly pointed to large sections of Scherpbier to support the rejection without explaining how the reference teaches the claimed limitations. See lines 6-10 of page 3 of the Final Action (Paper Number 14) for example. The Examiner attempts to remedy this lack of support in the rejection by explaining his position in the answer. See for example, the answer at page 9, line 18, through page 10, line 12. Here we find that the Examiner's explanation of his position with regard to "a listening program responsive to requests for remote access" still does not fully cover the claimed "request for remote access."

Appellants also argue at page 6 of the brief, that "nor does Scherpbier teach a client agent capable of controlling the client computer." Again we agree. The Examiner has pointed to a large section of Scherpbier to support the rejection without explaining how the reference teaches the claimed limitation. See lines 6-10 of page 3 of the Final Action. We have reviewed column 3, line 40, to column 4, line 50, of Scherpbier and do not find any mention of "a client agent for communicating" as claimed by Appellants. With regard to this claim limitation, the Examiner

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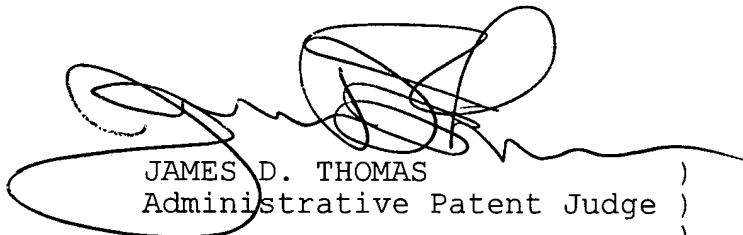
has not attempted to remedy this lack of support in the rejection by explaining his position in the answer. Therefore, we find that Scherpbier fails to teach this limitation.

For the reasons above, we find that the Examiner has not met the initial burden of establishing a *prima facie* case of obviousness.

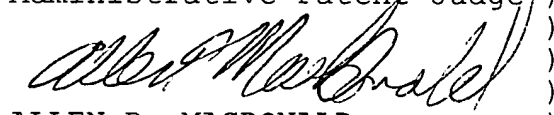
Conclusion

In view of the foregoing discussion, we have not sustained the rejection under 35 U.S.C. § 103 of claims 1-22.

REVERSED


JAMES D. THOMAS
Administrative Patent Judge)


STUART S. LEVY
Administrative Patent Judge)


ALLEN R. MACDONALD
Administrative Patent Judge)

) BOARD OF PATENT
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) AND
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